INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	3
Statement	3
Argument	9
The National Labor Relations Act supersedes the Wisconsin Employment Peace Act as applied in this case	9
Appendix A—National Labor Relations Act of 1935	15
Appendix B—Labor Management Relations Act of 1947	21
Appendix C—Wisconsin Employment Peace Act	30

TABLE OF AUTHORITIES

Cases:	
Allegheny-Ludlum Steel Corporation v. *Kelley*, 330 U. S. 767	12
Bethlehem Steel Co. v. *New York State Labor Relations Board*, 330 U. S. 767	5, 8, 9, 10, 11, 12, 13
Bowles v. *United States*, 319 U. S. 33	5
Elyria Telephone Co., The, Matter of, 58 N. L. R. B. 402	10
Lorain Telephone Company, The, Matter of, 58 N. L. R. B. 478	4
National Labor Relations Board v. *J. G. Boswell Co.*, 136 F. 2d 585	10
National Labor Relations Board v. *Central Missouri Telephone Co.*, 115 F. 2d 563	10
National Labor Relations Board v. *Fainblatt*, 306 U. S. 601	9
Newark Telephone Co., Matter of, 59 N. L. R. B. 1408	10
Ohio Telephone Service Co., Matter of, 72 N. L. R. B. 488	10
Peoples Telephone Corporation, The, Matter of, 69 N. L. R. B. 540	4
Statutes:	
National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*):	
Section 1	15
Section 2 (2)	16
Section 2 (3)	17
Section 2 (6)	17
Section 2 (7)	17
Section 4 (a)	17
Section 7	18
Section 8 (1)	18
Section 8 (2)	18

Statutes—Continued Page

National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*)—Continued

Section 8 (3) 18
Section 8 (4) 19
Section 8 (5) 19
Section 9 (a) 19
Section 9 (b) 11, 19
Section 9 (c) 19
Section 10 (a) 20
Section 14 20

National Labor Relations Act as amended by Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. Supp. I, 151, *et seq*):

Section 2 (6) 21
Section 2 (7) 21
Section 9 (a) 21
Section 9 (b) 22
Section 9 (c) 23
Section 9 (d) 24
Section 9 (e) 25
Section 9 (f) 26
Section 9 (g) 27
Section 9 (h) 28
Section 10 (a) 13, 29

Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*):

Section 101 21
Section 104 29

Wisconsin Employment Peace Act (Ch. 111, Wisconsin Statutes, 1947 (C. 57 L. 1939, as amended by C. 515 L. 1939, C. 375, 465 L. 1943, C. 424, 504 L. 1945 and C. 2, 530 L. 1947):

Section 111.02 (2) 30
Section 111.02 (3) 30
Section 111.02 (4) 31
Section 111.02 (5) 31
Section 111.02 (6) 11, 31
Section 111.02 (7) 31
Section 111.04 32
Section 111.05 (1) 32
Section 111.05 (2) 33
Section 111.05 (3) 33
Section 111.06 (1) 34
Section 111.07 (8) 34

Miscellaneous:

Moody's Manual of Utilities (1947) 4

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 38

LA CROSSE TELEPHONE CORPORATION, APPELLANT

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULÆ AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

No. 39

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B–953, A. F. OF L., APPELLANT

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

ON APPEALS FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin (R. 48) is reported in 251 Wis. 583 and 30

N. W. 2d 241. The opinion of the Circuit Court of La Crosse County (R. 1) and Wisconsin Employment Relations Board's Direction of Election (R. 15), its Accompanying Memorandum (R. 17), and its Certificate of Representatives (R. 12) are not officially reported.

JURISDICTION

The judgments of the court below were entered on December 23, 1947 (R. 58). Petitions for appeals to this Court were filed by the La Crosse Telephone Corporation (R. 59) and Local Union No. B–953 of the International Brotherhood of Electrical Workers, A. F. of L. (R. 63) on February 25, 1948, and were allowed the same day (R. 61, 66). The jurisdiction of this Court was invoked under Section 237 (a) of the Judicial Code, as amended, which has since been superseded by Section 1257 of 28 U. S. C., as codified June 25, 1948. On April 19, 1948, this Court entered orders postponing consideration of the question of jurisdiction until the hearing on the merits.

QUESTION PRESENTED

This brief is limited to discussion of the question on the merits, namely:

Whether, when the National Labor Relations Board has consistently exercised jurisdiction over questions concerning representation and charges of unfair labor practices involving employees of an employer admittedly engaged in commerce

within the meaning of Section 2 (6) of the National Labor Relations Act, and when the Board has consistently found that employers in the same industry, of comparable size and type of operation, are engaged in commerce within the meaning of the Act, a State may entertain a petition filed with it by a labor organization for the purpose of resolving a question concerning representation of such employees which is cognizable by the National Board, and certify a collective bargaining representative.

STATUTES INVOLVED

The appeals involve the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*), and the National Labor Relations Act as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*), herein sometimes called the National Act, and the Wisconsin Employment Peace Act (Ch. 111, Wisconsin Statutes, 1947), as amended, herein sometimes called the State Act. The pertinent provisions of the statutes are set forth in the appendices *infra*, pp. 15–34.

STATEMENT

La Crosse Telephone Corporation, hereinafter called the Company, operates a telephone business in La Crosse County, Wisconsin. It is a subsidiary of the Central Telephone Company, other

subsidiaries of which operate telephone businesses in Illinois, Virginia and many other states (R. 23). A telephone exchange at Park Ridge, Illinois, is managed from the La Crosse office of the Company (R. 24).[1]

The National Labor Relations Board has uniformly held that telephone companies of comparable size and mode of operation are subject to the National Act. See, e. g., *Matter of The Lorain Telephone Company*, 58 N. L. R. B. 478; *Matter of The People's Telephone Corporation*, 69 N. L. R. B. 540.

On May 3, 1941, the International Brotherhood of Electrical Workers, A. F. of L., Local B–953 (hereinafter called the Union), filed charges with the National Labor Relation Board (hereinafter called the National Board) alleging that the Company had violated Sections 8 (1) and (2) of the National Labor Relations Act. Thereupon the Union and the Company entered into a settlement agreement, approved by the regional director of the National Board, pursuant to which the Company posted the usual notices announcing that it would respect the requirements of the National Act and undertook to recognize the

[1] According to Moody's Manual of Utilities (1947), the gross revenue of the Company for the calendar year ended December 31, 1946 was $537,219. During the same year it handled 455,742 toll calls. It operates eight telephone exchanges in La Crosse County, Wisconsin and has approximately 150 employees.

Union as the collective bargaining representative of its plant and traffic department employees. The charges were then withdrawn.[2]

Sometime thereafter a collective bargaining agreement was entered into between the Company and the Union fixing the wages and terms and conditions of employment of employees in both departments. On December 19, 1945, the Company and the Union entered into a renewal of this or a succeeding collective bargaining agreement. The renewal agreement so entered into provided that it should become "effective as of the 1st day of December 1945 for a period of one year and [should] continue in full force and effect from year to year thereafter unless written notice [were] given by either party—to the other on or before ninety days prior to the annual expiration date requesting that the agreement be amended or cancelled." (R. 36.) By letter dated August 28, 1946 the Union notified the Company of its desire to amend the agreement (R. 22). New schedules of wages and hours were promptly agreed upon by the Company and representatives of the Union (R. 36, 38). The membership of the Union approved the schedules (R. 21–22), but rejected agreements incorporating them because

[2] The facts stated in this paragraph are not shown by the record, but are judicially noticeable. Cf. *Bowles* v. *United States*, 319 U. S. 33, 35; *Bethlehem Steel Company* v. *New York State Labor Relations Board*, 330 U. S. 767, 771.

of the absence of a clause permitting reconsideration of the wage rates prior to December 1, 1947 (R. 29). Thereafter the Company and representatives of the Union agreed upon a provision permitting reconsideration of the wage rates as of March 1, 1947 (R. 30). This was approved by the membership of the Union on September 25, 1946 and the Company was notified of the approval on September 27, 1946 (R. 22). The agreement of the Company and the Union to the amendments to collective bargaining agreement of December 19, 1945, although evidenced by correspondence (R. 24, 26, 27, 30) had not been formally engrossed prior to October 18, 1946.

Meanwhile, on September 20, 1946, the Telephone Guild of Wisconsin (hereinafter called the Guild) filed with the National Board a petition asserting that a question of representation affecting commerce existed with respect to all employees of the Company, and asking that the Board ascertain and certify the collective bargaining representative of such employees (R. 17). The National Board accepted the petition and notified the Company of its filing by a letter sent from its regional office at Minneapolis on September 24, 1946 (R. 25). On October 8, 1946, the Guild withdrew its petition and on the same day filed a petition seeking the same relief with the Wisconsin Employment Relations Board (R. 18–19).

The Wisconsin Board held a hearing on the petition (R. 18 *et seq.*), and directed that separate elections be conducted among the employees of plant, traffic and office departments of the Company for the purpose of determining whether the employees desired to be grouped in separate departmental units or in a single unit, and which representative, if any, they desired to select (R. 15). In ordering the elections the Wisconsin Board held that while the Company and the Union had on September 27, 1946 reached a collective bargaining agreement extending to December 1, 1947, the agreement had been arrived at after the Company had been notified (presumably by the letter sent to it by the National Board (R. 25)) that the Guild claimed to represent a majority of its employees (R. 17). Accordingly it held that the agreement did not bar an election (R. 17–18).

The elections were held as directed and the Wisconsin Board, on January 14, 1947, certified that as a result thereof, the employees in the plant and traffic departments had elected to combine in a single bargaining unit, and had chosen the Guild as their collective bargaining representative, and that the employees in the office department had elected to constitute themselves a separate unit and had chosen not to be represented by any collective bargaining representative (R. 12–15).

At no time during the proceedings before it did the Wisconsin Board make any inquiry as to.

whether the Company was engaged in interstate commerce.

Both the Company (R. 2) and the Union (R. 6) brought action in the Circuit Court of La Crosse County, Wisconsin, to have the certification set aside. Here it was admitted that the Company was engaged in interstate commerce in that it handled interstate telephone calls. In view of this concession, the Circuit Court on April 28, 1947 held, on the authority of *Bethlehem Steel Company* v. *New York Labor Relations Board*, 330 U. S. 767, that the Wisconsin Board was without jurisdiction to issue the certification (R. 1). Accordingly it entered judgment on May 8, 1947, setting aside the Board's certification (R. 11–12).

On May 5, 1947, after the Circuit Court had rendered its decision, the Guild filed a second petition for certification with the National Board. This petition was dismissed by the regional director on the ground that a then existing collective bargaining agreement between the Company and the Union constituted a bar to the relief sought. The Guild appealed to the National Board from the regional director's order. While the appeal was pending, the Guild, on August 4, 1947, withdrew its petition (Case No. 18–R–1882). Simultaneously with the withdrawal of this petition the Guild filed a third petition with the National Board, which, on February 9, 1948, was dismissed by the regional director for an insufficient showing of interest (Case No. 18–R–1946).

In the interim the Wisconsin Board, through the Attorney General of Wisconsin, appealed from the judgments of the Circuit Court vacating the Wisconsin Board's certification (R. 44, 45). On December 23, 1947, that court, while conceding that the Company rendered some interstate long distance service (R. 49), held that "although the National Board's power over the subject is paramount, it is not exclusive * * * until the federal power is exercised or jurisdiction thereto is taken as to particular employees" (R. 48–55). Accordingly it reversed the judgments of the Circuit Court with instructions to enter judgments sustaining the direction of election and certification of the results thereof (R. 57, 58–59).

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT SUPERSEDES THE WISCONSIN EMPLOYMENT PEACE ACT AS APPLIED IN THIS CASE

I

We believe that the decision of this Court in the *Bethlehem* case requires reversal of the judgment below. In that case this Court rejected "a case by case test of federal supremacy", and held that where the National Board had exercised "jurisdiction of the industry" in which the particular employer is engaged there is no "room" left "for the operation of the state authority" (330 U. S., at p. 776). Here, as in the *Bethlehem* case, the employer has such a relation to interstate commerce that for the reasons stated in *National Labor*

Relations Board v. *Fainblatt*, 306 U. S. 601, federal power reaches its labor relations (cf. 330 U. S., at p. 773).[3] Here, as in that case, the employer is engaged in an industry over which the National Board has consistently exercised jurisdiction.[4] Here, as in that case, both the state and the federal governments have "laid hold of the same relationship for regulation, and it involves the same employers * * * and the same employees" 330 U. S., at p. 775. Here, as in that case, each government "has delegated to an administrative authority a wide discretion in applying this plan of regulation to specific cases" (*ibid.*).[5] Each administrative authority is "gov-

[3] The fact that the Company handles some interstate telephone calls, a fact conceded by both courts below (R. 1, 49), is enough to establish this. *National Labor Relations Board* v. *Central Missouri Telephone Co.*, 115 F. 2d 563 (C. C. A. 8); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585 (C. C. A. 9).

[4] *Matter of The Elyria Telephone Co.*, 58 N. L. R. B. 402; *Matter of Newark Telephone Co.*, 59 N. L. R. B. 1408; *Matter of Ohio Telephone Service Co.*, 72 N. L. R. B. 488. See also cases cited note 3, *supra*.

[5] The contention that the Wisconsin Board acts in a purely ministerial capacity is plainly incorrect. For example, the Wisconsin Board was under a duty to determine whether the collective bargaining agreement between the Company and the Union barred an election for the purpose of choosing a collective bargaining representative. That duty was not ministerial but involved the highest degree of discretion. So too, the Wisconsin Board had to decide whether the Guild has shown a sufficient interest to justify holding an election. That duty clearly was not ministerial. While it is true that in determining the appropriateness of a collective bargaining

erned by * * * different standards" (*ibid.*). Here, the Wisconsin Board, like the New York Board in the *Bethlehem* case, is required to find craft units appropriate for collective bargaining purposes whenever a majority of employees in a particular craft so decide, whereas the National Board is under no such requirement. Compare, Section 111.02 (6) of the Wisconsin Act with Section 9 (b) of the National Act. It is also required, unlike the National Board, to find "department" units appropriate whenever by vote a majority of employees in a particular department so decide (*ibid.*). It was pursuant to this provision that the Wisconsin Board in this very case held separate elections among employees in the traffic and plant departments to determine whether they desired to constitute a single or two separate units (*supra*, p. 7).

Moreover, here, as in the *Bethlehem* case, the National Board has exercised jurisdiction over the specific employer and employees whose relations the state seeks to regulate. Long before the Wisconsin Board attempted to exercise jurisdiction, agents of the National Board had entertained charges of unfair labor practices filed against the

---

unit (cf. Section 111.02 of the Wisconsin Act) and in certifying the winning union, the Wisconsin statute required the Wisconsin Board to be governed by the results of the election and left it almost no discretion, in those instances the Wisconsin statute itself deviated materially from the National Act, see *infra*, p. 11.

Company and had administratively procured a settlement of those charges which included an agreement by the Company to observe and respect the requirements of the National Law (pp. 4–5, *supra*). And after the Wisconsin Board assumed jurisdiction in this case, agents of the National Board entertained a petition filed by the Guild, the very union which invoked the jurisdiction of the Wisconsin Board in this case, and administratively dismissed the petition on the grounds that it was without merit.

As in the *Bethlehem* case, "there was no administrative concession that the nature of [the Company's] business put [its] employees beyond reach of federal authority" (330 U. S., at p. 775).

The only difference between the *Bethlehem* case and the companion case of *Allegheny-Ludlum Steel Corporation* v. *Kelley*, on the one hand, and the instant case, on the other, is that in both of the former cases the National Board had formally found in prior proceedings, wholly unconnected with those before the Court, that the Bethlehem and the Allegheny-Ludlum corporations were engaged in activities affecting commerce within the meaning of the National Act, whereas in the present case no such formal finding has been made with respect to the Company. We believe that this difference is immaterial. A contrary holding would, in effect, revert to the "case by case" test rejected by this Court in the *Bethlehem* case (330

U. S., at pp. 771, 776). It would permit state regulation of matters committed by Congress to the discretion of the National Board, where, as here, the National Board has consistently exercised jurisdiction and disposed on the merits of matters involving the same employer and employees, if only such disposition has been on an administrative basis, and the Board has not been required to issue a formal Decision and Direction of Election, Certification, or Order under Section 10 (e) of the Act, to dispose of them. The incompatibility of such an approach with the *Bethlehem* case is apparent from the fact that in that case this Court recognized that formulation by the Board of an administrative policy denying the appropriateness of bargaining units of foremen, was an effective exercise of jurisdiction over the subject matter of foremen units which precluded the states from dealing with that subject matter.

II

The recent amendment of Section 10 (a) of the National Labor Relations Act does not change the foregoing rule of the *Bethlehem* case.

Section 10 (a) now expressly provides that the Board may, by agreement with a State or Territorial agency, "cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local

in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Obviously nothing in this provision permits State agencies to act in situations, such as here, where the National Board has actually exercised jurisdiction over the labor relations of the employer.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

ROBERT N. DENHAM,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
RUTH WEYAND,
Assistant General Counsel,
MOZART G. RATNER,
ALBERT DREYER,
Attorneys,
National Labor Relations Board.

NOVEMBER 1948.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate the obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. ~~4.~~ (a)

* * * * *

* * * The Board may establish or utilize such regional, local, or other agencies,

and utilize such voluntary and uncompensated services, as may from time to time be needed.

* * * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor prac-

tice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provision of Section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the repre-

sentatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives:

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

SEC. 14. Wherever the application of the provision of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

APPENDIX B

The pertinent provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such pur-

poses, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and

other persons' rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall

not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in

whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to

such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on be-

coming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnish to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constitutent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of

or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

* * * * *

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

APPENDIX C

The pertinent provisions of the Wisconsin Employment Peace Act (Chapter 111, Wisconsin Statutes 1947 (C. 57 L. 1939, as amended by C. 515 L. 1939, C. 375, 465 L. 1943, C. 424, 504 L. 1945 and C. 2, 530 L. 1947) are as follows:

111.02 *Definitions.* When used in this subchapter—

* * * * *

(2) The term "employer" means a person who engages the services of an employe, and includes any person acting on behalf of an employer within the scope of his authority, express or implied, but shall not included the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

(3) The term "employe" shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or his repre-

sentative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employe who is subject to the federal railway labor act.

(4) The term "representative" includes any person chosen by an employe to represent him.

(5) "Collective bargaining" is the negotiating by an employer and a majority of his employes in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employes in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(6) The term "collective bargaining unit" shall mean all of the employes of one employer (employed within the state), except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered, provided, that in appropriate cases, and to aid in the more efficient administration of

the employment peace act, the board may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be a "collective bargaining unit". A collective bargaining unit thus established by the board shall be subject to all rights by termination or modification given by this subchapter I of chapter 111 in reference to collective bargaining units otherwise established under said subchapter. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employes in each separate unit shall have voted by secret ballot as provided in section 111.05 (2) so to do.

(7) The term "unfair labor practice" means any unfair labor practice as defined in section 111.06.

* * * * *

111.04 *Rights of employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

111.05 *Representatives and elections.* (1) Representatives chosen for the purposes of collective bargaining by a majority of the employes voting in a collective bargaining unit shall be the exclusive representatives of all of the employes in such unit for the purposes of collective bargaining, provided

that any individual employe or any minority group of employes in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto.

(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02 (6), it shall be determined by secret ballot, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employes in any craft, division, department or plant as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the board shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employe or group of employes participating in the election, except that the board may, in its discretion, exclude from the ballot one who, at the time of the election, stands deprived of his rights under this subchapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner

as provided by subsection (8) of section 111.07 for review of orders of the board.

* * * * *

111.06 *What are unfair labor practices.* (1) It shall be an unfair labor practice for an employer individually or in concert with others:

* * * * *

(d) To refuse to bargain collectively with the representative of a majority of his employes in any collective bargaining unit; provided, however, that where an employer files with the board a petition requesting a determination as to majority representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the board.

* * * * *

111.07 *Prevention of unfair labor practices.*

* * * * *

(8) The order of the board shall also be subject to review in the manner provided in chapter 227, except that the place of review shall be the circuit court of the county in which the appellant or any party resides or transacts business.